IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8138 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHAVJI LAXMANBHAI SARADVA

Versus

DIST MANAGER AND ORS

Appearance:

1. Special Civil Application No. 8138 of 1991

MR SAURABH MEHTA for MR YN OZA for Petitioner

MR KM PATEL for Respondents.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 27/12/2002

ORAL JUDGEMENT

By filing instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or

direction to quash order dated October 14, 1991, passed by the General Manager (Administration) of the Gujarat State Civil Supplies Corporation Limited, by which order dated September 27, 1991, passed by the Regional Manager, Divisional Office, Surat setting aside order dated June 30, 1991 passed by the District Manager, Grade-I, Surat imposing punishment of withholding of three increments with future effect on the petitioner, is reversed, and it is directed that the appeal filed by the petitioner against imposition of punishment of withholding of three increments with future effect should be heard by the Regional Manager, Rajkot. The petitioner has further prayed to quash order dated September 27, 1991 passed by the Regional Manager, Divisional Office, Surat by which order dated June 30, 1991 imposing punishment of withholding of three increments with future effect on the petitioner, is set aside, but the District Manager, Grade-I, Surat is directed to conduct inquiry against the petitioner as indicated in the order. The petitioner has also prayed to quash order dated August 6, 1991 passed by the Manager(Personnel) of the Gujarat State Civil Supplies Corporation Limited, by which the petitioner was transferred as Assistant Manager (Departmental Stores), Surendranagar.

2. The petitioner is employed as an Assistant Manager with the Gujarat State Civil Supplies Corporation Limited ("the Corporation" for short). It is the case of the Corporation that when the petitioner was discharging duties as Assistant Manager at Khatodara Centre in Surat District, he had committed several irregularities. Therefore, it was contemplated to hold a departmental inquiry against him. By an order dated May 24, 1990 the petitioner was placed under suspension, as a departmental inquiry was contemplated against him. Thereafter he was served with a chargesheet dated August 22, 1990, wherein 20 different charges were levelled against him and he was called upon to show cause as to why one of the major penalties enumerated in Rule-6 of the Gujarat State Civil Supplies Corporation Limited (Discipline and Appeal) Rules, 1984 ("the Rules" for short) should not be imposed on him. The petitioner had given his reply to the show cause notice and denied all the charges levelled against him. However, it appears that no departmental inquiry was conducted against the petitioner. The petitioner was thereafter served with a notice dated April 23, 1991 calling upon him to show cause as to why he should not be dismissed from service. The petitioner had given a detailed reply dated April 26, 1991 to the said show cause notice. After considering the reply, the disciplinary authority i.e. District Manager, Grade-I,

Surat had passed an order dated June 30, 1991 imposing punishment of withholding of three increments with future effect on the petitioner. The record of the petition shows that thereafter the Manager (Personnel) of the Corporation had passed an order dated August 6, 1991 transferring the petitioner as an Assistant Manager (Departmental Stores), to Surendranagar, which is produced at Annexure-A to the petition.

3. Feeling aggrieved by the order of punishment, the petitioner had approached the High Court by way of filing Special Civil Application No. 5394/1991. The Court noticed that the order imposing punishment was an appealable order. Therefore, the learned counsel of the petitioner had sought permission to withdraw the petition with a view to filing an appeal against the order imposing punishment of withholding of three increments with future effect. The permission as sought for was granted by the Court and the petition was disposed of as withdrawn by an order dated August 14, 1991.

4. Thereafter the petitioner preferred an appeal before the appellate authority. The Manager (Vigilance) of the Corporation, having his Office at Gandhinagar, by a letter dated September 6, 1991, directed the Regional Manager, Surat to hear the appeal filed by the petitioner and, therefore, a communication dated September 11, 1991 was addressed by the Regional Manager, Surat to the petitioner calling upon him to remain present before him on September 19, 1991 for hearing of the appeal. The Regional Manager, Divisional Office, Surat, who heard the appeal, was of the opinion that departmental proceedings were initiated against the petitioner without studying and complying with the provisions of the Rules. Under the circumstances, he passed an order dated September 27, 1991 setting aside the order dated June 30, 1991 passed by the District Manager, Grade-I, Surat by which punishment of withholding of three increments with future effect was imposed on the petitioner. By the said order the Regional Manager, Divisional Office, Surat also directed the District Manager, Grade-I, Surat to conduct de novo inquiry against the petitioner after following the provisions of Rule-8 of the Rules. The order passed by the Regional Manager, Divisional Office,Surat is produced by the petitioner at Annexure-E to the petition.

5. The order dated September 27, 1991 passed by the Regional Manager, Divisional Office,Surat, was taken into review by the General Manager (Administration) of the Corporation. The General Manager was of the view that the petitioner having been transferred to Surendranagar,

the Regional Manager, Divisional Office,Rajkot was competent to hear the appeal filed by the petitioner against the order imposing punishment of withholding of three increments with future effect, and not the Regional Manager, Divisional Office, Surat. The General Manager (Admn.) therefore, passed an order dated October 14, 1991 setting aside the order dated September 27, 1991 passed by the Regional Manager, Divisional Office, Surat, and directed that the appeal filed by the petitioner should be heard by the Regional Manager, Divisional Office, Rajkot. The said order is produced on the record of the petition at Annexure-E to the petition, which has given rise to the present petition.

6. I have heard Mr. Saurabh Mehta, learned counsel, for Mr. Y.N.Oza, learned Senior Advocate of the petitioner, and Mr. K.M.Patel, learned counsel appearing for the respondents, and taken into consideration the documents forming part of the petition.

7. As is evident from the undisputed facts, the District Manager, Grade-I, Surat had imposed punishment of withholding of three increments with future effect on the petitioner because it was alleged against the petitioner that while serving as an Assistant Manager at Khatodara Centre in Surat District he had committed several irregularities. The order imposing punishment was subjected to challenge in Special Civil Application No. 5394/1991, but the same was withdrawn with a view to availing of an alternative remedy of appeal provided under the Rules. Thereafter the petitioner had preferred an appeal and the Manager (Vigilance) of the Corporation having his office at Gandhinagar, had directed the Regional Manager, Divisional Office, Surat to hear the appeal. Accordingly, a communication dated September 11,1991 was addressed by the Regional Manager, Surat to the petitioner informing him that hearing of the appeal was fixed on September 19, 1991 and that he should remain present personally, as the appeal was to be taken up for hearing. After considering the material on record, the Regional Manager,Divisional Office, Surat passed an order dated September 27, 1991 setting aside the order dated June 30, 1991 passed by the District Manager, Grade-I, Surat by which punishment of withholding of three increments with future effect was imposed on the petitioner on the ground that the provisions of the Rules were not followed while conducting the inquiry against the petitioner. By the said order the Regional Manager, Divisional Office, Surat also directed the District Manager, Grade-I, Surat to conduct de novo departmental inquiry against the petitioner in the light of the

provisions of Rule-8 of the Rules. This order was taken in review by the General Manager (Admn.) and the General Manager by order dated October 14, 1991 directed that the appeal should be heard by the Regional Manager, Divisional Office, Rajkot because after imposition of punishment of withholding of three increments with future effect on the petitioner, he was transferred as an Assistant Manager (Departmental Stores), Surendranagar. In my view, the Regional Manager, Divisional Office, Surat was competent to hear the appeal filed against the order of the District Manager, Grade-I, Surat, by which punishment of withholding of three increments with future effect was imposed on the petitioner because it was alleged against the petitioner that he had committed irregularities while performing duties as Assistant Manager at Khatodara Centre in Surat District. The General Manager (Admn.) was not justified in taking the view that the Regional Manager, Division Office, Rajkot was competent to hear the appeal filed by the petitioner on the ground that after imposition of punishment he was transferred to Surendranagar. Thus, the order dated October 14, 1991 passed by the General Manager (Admn.) directing that the appeal filed by the petitioner should be heard by the Regional Manager, Divisional Office, Rajkot, is liable to be set aside.

8. The contention that the direction given by the Regional Manager, Divisional Office, Surat to conduct de novo inquiry after following the provisions of the Rules should be quashed, cannot be upheld, inasmuch as the appellate authority is wholly justified in directing the disciplinary authority to conduct departmental inquiry as per the Rules and no exception can be taken to such a direction. Therefore, the prayer to set aside the direction given by the Regional Manager, Divisional Office, Surat to the District Manager, Grade-I, Surat to conduct inquiry against the petitioner in accordance with the rules, cannot be granted. So far as challenge to transfer order dated August 6, 1991 is concerned, the learned counsel for the respondents has informed the Court that the petitioner, at present, is discharging duties at Bharuch. Thus, with the passage of time, challenge to transfer order has become infructuous and is liable to be rejected.

For the foregoing reasons, the petition partly succeeds. The order dated October 14, 1991 passed by the General Manager (Admn.) of the Corporation by which order dated September 27, 1991 passed by the Regional Manager, Divisional Office, Surat setting aside the order dated June 30, 1991 passed by the District Manager, Grade-I, Surat imposing punishment of withholding of three

increments with future effect on the petitioner and directing the District Manager, Grade-I, Surat to conduct de novo inquiry against the petitioner after complying with the rules is set aside, is hereby quashed. As the challenge to order dated September 27, 1991 passed by the Regional Manager, Divisional Office, Surat fails, it is clarified that the District Manager, Grade-I, Surat or the disciplinary authority would be entitled to conduct de novo departmental inquiry against the petitioner in accordance with the Rules in force. The challenge to order dated August 6, 1991 transferring the petitioner as Assistant Manager (Departmental Stores), Surendranagar fails.

Rule is made absolute to the extent indicated hereinabove only. There shall be no order as to costs.

(patel) (J.M.Panchal,J.)